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# SECTION C

## GENERAL REQUIREMENTS

### CHAPTER 2

#### INTERAGENCY CONSULTATION

The transportation conformity rule requires that agencies including EPA, DOT, State DOTs, State and local air quality agencies, and MPOs collaboratively develop effective interagency consultation procedures.<sup>1</sup> Experience has shown that good relationships between agencies responsible for conformity determinations are key to a successful conformity process. These procedures must be included in the SIP revision (also known as the conformity SIP) required under the transportation conformity rule.<sup>2</sup> The SIP requirements, the distinction between a control strategy or maintenance SIP and a conformity SIP, and the relationship between the SIP and transportation conformity are discussed in Section B of this Guide. SIPs are legally binding rules and requirements by States to take specific actions to reduce emissions. The importance of demonstrating consistency to the SIP through the conformity process cannot be overstated. The interagency consultation process must include the following three components as well as conformity criteria and procedures as noted above (see Footnote 2):

1. General factors and specific processes for interagency consultation,
2. Conflict resolution procedures, and
3. Public consultation procedures developed in accordance with ISTEA's Metropolitan Planning regulations.<sup>3</sup>

Interagency consultation is central to the entire transportation conformity process. It serves as the underpinning for conformity determinations and as the primary mechanism for ensuring early coordination and negotiation between all parties affected by transportation conformity, including the general public, the business community, and other interested parties. One of the principal tenets of transportation conformity is that better coordination between agencies will yield better decisions. Each State establishes the interagency consultation process through the conformity SIP and *failure to comply with the established interagency consultation procedures constitutes a SIP violation*. Consultation must occur as stipulated in the conformity SIP or Federal rule (in the absence of an approved conformity SIP) prior to the MPOs' and DOTs' conformity determination.

Nonattainment areas have been defining the interagency consultation process and putting it into practice over the past several years. New working partnerships and lines of communication have been established between Federal, State, and local transportation and air quality agencies. In addition, interagency

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<sup>1</sup> 40 CFR §§93.105, 93.112, as amended by 62 FR 43804-6, 43809, Aug. 15, 1997.

<sup>2</sup> 40 CFR §51.390, as amended by 62 FR 43780, 43801, Aug. 15, 1997.

<sup>3</sup> 23 CFR Part 450, 49 CFR Part 613, 58 FR 58067, 58072, Oct. 28, 1993.

consultation has proven to be an important tool for assisting State and local agencies in meeting the transportation conformity requirements and has been consistently cited as a benefit of the transportation conformity process. The benefits of interagency consultation have been documented in U.S. DOT's *Interagency Consultation: The Key Toward Collaborative State and Local Decision Making in the Conformity Process*.<sup>4</sup> In addition, the benefits of interagency consultation were cited by States in a survey conducted by the National Governors Association (NGA)<sup>5</sup> and include: promoting a better understanding of issues, fostering trust between agencies, and enhancing coordination on issues. Early and frequent coordination helps to avoid last minute conformity problems between transportation and air quality agencies. The NGA survey report also stressed the need for transportation officials to get involved in motor vehicle emission budget development and related SIP issues.

This Chapter provides the relevant regulatory and preamble language on interagency consultation and discusses the six general factors, 13 specific processes, conflict resolution requirements, and legal mechanisms that may be used to comply with the interagency consultation requirements.

## **LEGISLATIVE AND REGULATORY PROVISIONS**

Following are the regulatory provisions for interagency consultation as stated in the CAA and the transportation conformity rule:

CAA §101(b)(4)(B)(i), 42 U.S.C. §7410(a)(2)

*The procedures and criteria shall, at a minimum-address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;*

40 CFR §§93.105, 93.112, as amended by 62 FR 43804, 43809, August 15, 1997

### §93.105 Consultation

(a) General. *The implementation plan revision required under §51.390 of this chapter shall include procedures for interagency consultation (Federal, State, and local), resolution of conflicts, and public consultation as described in paragraphs (a) through (e) of this section. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.*

(1) *The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State*

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<sup>4</sup> U.S. DOT *Interagency Consultation: The Key Toward Collaborative State and Local Decision Making in the Conformity Process*, Publication No. DOT-T-97-11, Oct., 1996.

<sup>5</sup> *Integrating Transportation and Clean Air Planning: An Overview of State Experiences with the Transportation Conformity Requirements*, National Governors Association Center for Best Practices, Feb. 1997.

departments of transportation, and DOT in developing applicable implementation plans.

(2) Before EPA approves the conformity implementation plan revision required by §51.390 of this chapter, MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section, before making conformity determinations.

*(b) Interagency consultation procedures: General factors.*

(1) States shall provide well-defined consultation procedures in the implementation plan whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

- (i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;
- (ii) The organizational level of regular consultation;
- (iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;
- (iv) The frequency of, or process for, convening consultation meetings and responsibilities for establishing meeting agendas;
- (v) A process for responding to the significant comments of involved agencies; and
- (vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

*(c) Interagency consultation procedures: Specific processes. Interagency consultation procedures shall also include the following specific processes:*

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

- (i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;
- (ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;
- (iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§93.126, 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;
- (iv) Making a determination, as required by §93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to

*approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;*

*(v) Identifying, as required by §93.123(b), projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis;*

*(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in §93.126 or §93.127; and*

*(vii) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by §93.109(g)(2)(iii).*

*(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:*

*(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in §93.104; and*

*(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.*

*(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.*

*(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed.*

*(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of §93.122.*

*(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g. household/travel transportation surveys).*

*(7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (a)(1) of this section, including Federal agencies.*

*(d) Resolving conflicts. Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by §51.390 of this chapter shall define the procedures for starting the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal*

*to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.*

*(e) Public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.*

The August 1997 transportation conformity rule preamble added the following specific language on the process for choosing which conformity tests would be performed in isolated rural nonattainment and maintenance areas:

*40 CFR as amended by 62 FR 43799, August 15, 1997*

*Process for choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas.*

*EPA is also adding a new element to the list of processes for which consultation procedures must be developed. Section §93.105(c)(1)(vii) requires areas to establish a process for choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by §93.109(g)(2)(iii). States without isolated rural nonattainment and maintenance areas would not need to develop such procedures. EPA decided to add the new consultation requirement to the conformity rule for clarity and so that the rule could serve as a comprehensive list of items that consultation procedures must address.*

The August 1997 preamble to the transportation conformity rule elaborates on public consultation requirements as follows:

*40 CFR as amended by 62 FR 43799, August 15, 1997*

*Public Consultation Requirements.*

*EPA has modified §93.105(a) to clarify that the public consultation requirements described in §93.105(e) must also be required by the conformity SIP. Because the Federal conformity rule*

*ceases to apply once the conformity SIP has been approved, the requirements of §93.105(e) must be required by the conformity SIP or the SIP would not provide for appropriate public input. Section §93.105(e) requires public consultation consistent with the requirements of 23 CFR 450.316(b) and articulates a few specific requirements. EPA intends for the conformity SIP to reiterate these statements; EPA does not intend for the conformity SIP to actually include the specific public consultation procedures that an area develops under 23 CFR 450.316(b).*

#### §93.112 Criteria and Procedures: Consultation

*Conformity must be determined according to the consultation procedures in this rule and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan revision required by §51.390 of this chapter is fully approved by EPA, the conformity determination must be made according to §93.105(a)(2) and §93.105(e) and the requirements of 23 CFR part 450.*

See EPA's proposal to the 1997 conformity rule amendments (61 FR 36128-9, July 9, 1996) for more background on the clarifications made to the public participation requirements.

In addition to the conformity rule requirements on public consultation, the FHWA/FTA planning regulations<sup>6</sup> require that a proactive public involvement process be established to facilitate continuing public involvement on plan/TIP development and major amendments.

### **INCORPORATING INTERAGENCY CONSULTATION PROCEDURES INTO THE CONFORMITY SIP REVISION**

The conformity rule requires that a SIP revision (conformity SIP), as discussed in Section B of this Guide, be submitted that includes the procedures to be undertaken by MPOs, transit agencies, State DOTs, and DOT with State and local air agencies and EPA before making conformity determinations on transportation plans, programs, and projects; and by State and local air agencies and EPA with MPOs, transit agencies, and State DOTs and DOT in developing SIPs.<sup>7</sup>

The conformity SIP revision and its interagency consultation procedures are required to meet SIP planning requirements including ensuring adequate public involvement and enforceability under State and Federal law. Although each nonattainment and maintenance area is provided flexibility in developing a process that is tailored to unique area needs, all transportation conformity rule requirements for interagency consultation must be met and certain sections of the rule included verbatim. Before EPA approves the SIP revision including the interagency consultation requirements, reasonable opportunity for consultation between all affected agencies must be provided for MPOs and State DOTs.

### **FREQUENCY OF INTERAGENCY CONSULTATION**

At a minimum, interagency consultation must occur during key junctures of the transportation conformity

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<sup>6</sup> 23 CFR, Part 450.316(b)(1), p. 58073.

<sup>7</sup> 40 CFR §93.105(a)(1)(2), as amended by 62 FR 43780, 43805, Aug. 15, 1997.

process as shown in Exhibit 7 (see Section A) and prior to a conformity determination being made. As can be seen in the Exhibit, interagency consultation must occur during key phases of the conformity process including the following: development of the SIP, transportation plan/TIP; determining when SIP, plan or TIP revisions are needed; and in determining project level conformity. There are general items that require consultation (e.g. commenting on plans/TIPs), and there are specific processes (e.g. selecting data assumptions, models, and determining which projects are regionally significant). The process has been found to be most effective when considered as a continuous process involving all key stakeholders in a conformity determination.

## **ROLES AND RESPONSIBILITIES OF DIFFERENT AGENCIES**

There must be agreement on roles and responsibilities of each agency at each stage of the conformity process. This includes the roles of agencies in the SIP, transportation plan, and TIP development processes, including policy and technical meetings. Exhibit 13 provides an overview of the general requirements and typical responsibilities of various agencies in transportation plan/TIP and SIP development. State and metropolitan areas have the flexibility to tailor roles and responsibilities to suit regional needs and institutional functions and relationships.

In addition, and in accordance with FHWA/FTA planning regulations, a public involvement process must be in place that offers ample opportunity to the public to comment on plan/TIP development issues. Please see Chapter 1 for a discussion of the FHWA/FTA planning requirements.

## **REQUIREMENTS FOR CIRCULATING DOCUMENTS AND SUPPORTING MATERIALS**

The following specific provisions related to public consultation were added to the interagency consultation process requirements in the August 15, 1997 revisions.<sup>8</sup> These provisions must be carried out by agencies doing conformity determinations (e.g. MPOs). They are as follows:

- a. Public access to information must be provided at the beginning of the public comment period and prior to taking formal action on the conformity determination on transportation plans and TIPs,
- b. Such information must include complete technical and policy information considered by the agency in supporting the conformity determination,
- c. Agencies must provide written responses to comments concerning non-Federally funded or approved projects and their emissions being reflected in the regional analysis supporting the conformity determination,
- d. Costs associated with providing information and documents to the public must be consistent with the

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<sup>8</sup> 40 CFR §93.105(e), as amended by 62 FR 43806, Aug., 15, 1997.

related provisions of the fee schedule in 49 CFR 7.95, the Freedom of Information Act, and

- e. Opportunity for public involvement in conformity determinations for projects are required where otherwise required by law.

#### **REQUIREMENTS FOR CONFLICT RESOLUTION PROCEDURES**

While a well-defined interagency consultation process facilitates the resolution of disagreements through communication, negotiation, and cooperation among agencies, the rule provides for the intervention of the Governor if the heads of State air agencies and MPOs and State DOTs cannot

## EXHIBIT 13

### Roles & Responsibilities of Federal, State, and Local Agencies\*

\* This Exhibit outlines general requirements and typical roles and responsibilities of the various involved agencies. Specific States and metropolitan areas may have negotiated different assignments of responsibility tailored to local conditions.

Players/Decision Makers	Action Required	When
<b>MPO</b>	<ul style="list-style-type: none"> <li>, conduct analysis on regional plan/TIP and projects</li> <li>, incorporate latest emissions factors, planning assumptions, and emissions models</li> <li>, circulate draft plan/TIP for interagency and public comment</li> <li>, ensure public involvement procedures are followed</li> <li>, ensure timely implementation of TCMs</li> <li>, respond to significant comments on TIP/plan conformity documents</li> <li>, review and approve conformity determination on plan/TIP/projects</li> <li>, in CO and PM<sub>10</sub> nonattainment areas, conduct "hot-spot" analysis as part of the NEPA process</li> <li>, consult with agencies throughout the conformity determination process</li> </ul>	<ul style="list-style-type: none"> <li>, at least every 3 years, when a new plan, TIP or amendments to a plan/TIP are proposed, or as needed based on SIP submittal</li> </ul>
<b>State Transportation Agency</b>	<ul style="list-style-type: none"> <li>, consult with agencies throughout the conformity determination process</li> <li>, conduct regional conformity analysis on projects not in metropolitan areas, based on interagency consultation</li> <li>, in CO and PM<sub>10</sub> nonattainment areas, conduct "hot-spot" analysis as part of the NEPA process</li> <li>, provide for public involvement/respond to significant comments</li> <li>, ensure timely implementation of TCMs</li> <li>, review and approve staff regional and hot-spot analysis</li> </ul>	<ul style="list-style-type: none"> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> </ul>
<b>State Air Quality/Environmental Agency</b>	<ul style="list-style-type: none"> <li>, prepare SIP for each relevant pollutant</li> <li>, hold public hearings prior to SIP adoption</li> <li>, ensure SIPs are complete and control measures are enforceable under the 1990 CAA, prior to board approval action</li> <li>, ensure latest emissions factors and planning assumptions are used for SIP development</li> <li>, interagency involvement during SIP development</li> <li>, review and approve staff recommendation, forward to EPA for Federal approval</li> </ul>	<ul style="list-style-type: none"> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> </ul>
<b>State Legislature</b>	<ul style="list-style-type: none"> <li>, adopt State legislation to develop and enforce applicable CAA provisions</li> <li>, ensure funding available for implementation of programs</li> </ul>	<ul style="list-style-type: none"> <li>, as needed</li> <li>, as needed</li> </ul>
<b>USDOT—FHWA/FTA</b>	<ul style="list-style-type: none"> <li>, make joint conformity determinations on MPO plans/TIPs amendments and projects</li> <li>, provide input as part of the interagency consultation process for plan/TIP/SIP development</li> <li>, ensure timely implementation of TCMs</li> <li>, ensure adequate public involvement as part of the metropolitan planning process</li> <li>, ensure that all other conformity and transportation planning requirements are met</li> <li>, involvement as part of interagency consultation meetings for MPO plan/TIP development</li> <li>, develop technical guidance on traffic demand and forecasting, and Federal aid program guidance</li> </ul>	<ul style="list-style-type: none"> <li>, at least every 3 years for each conformity determination or as needed</li> <li>, for each plan/TIP or plan/TIP amendment conformity determination</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> </ul>
<b>US EPA</b>	<ul style="list-style-type: none"> <li>, review submitted budgets for adequacy and implement adequacy process</li> <li>, provide technical guidance on TCMs and SIP development</li> <li>, review and comment on draft and submitted control strategy and maintenance SIPs</li> <li>, review, comment, and approve SIPs</li> <li>, interagency consultation involvement during SIP and plan/TIP development</li> <li>, review and comment on proposed conformity determinations</li> <li>, designates approved emissions models for use in SIP development and conformity determinations</li> <li>, designates "guideline" dispersion models for project level emissions analysis</li> </ul>	<ul style="list-style-type: none"> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> <li>, as needed</li> </ul>

Source: *Transportation Conformity: A Basic Guide for State and Local Officials*, FHWA, PD-97-035.

resolve conflicts among themselves.<sup>9</sup>

Specifically, the State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the air agency of the resolution of air agency comments. The interagency consultation procedures must specify the conditions under which the 14-day clock is started.

If the State air agency does not appeal to the Governor within 14 days, the MPO or State DOT may proceed with the final conformity determination. If the State air agency objects to the proposed resolution and appeals to the Governor, then the final conformity determination must have the concurrence of the Governor. The Governor cannot delegate this role to the head or staff of the State transportation agency, commission, board, MPO, or the head of the State or local air agency.

### **ESTABLISHMENT OF LEGALLY ENFORCEABLE STATE CONFORMITY PROCEDURES**

There are two principal legal mechanisms available to establish interagency consultation requirements in the conformity SIP:

1. State rulemaking through the State or local air agency, or
2. Memorandum of Understanding.

Regardless of which option is chosen, all requirements are included in the SIP and must be addressed in a manner which gives them full legal effect. Thus, *the State must have the legal authority to enforce and implement the SIP revision*. In addition, the chosen option must incorporate many sections of the conformity rule in verbatim form.<sup>10</sup> EPA has stated that State and local agencies can determine the appropriate legal mechanism, *so long as the mechanism meets all of the requirements of the CAA for adoption, submittal and implementation of SIPs*.<sup>11</sup>

The November 1993 preamble discussed the EPA's assumptions regarding the form of interagency consultation procedures and excerpts are noted below.

*40 CFR, 58 FR 62209, November 23, 1993*

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<sup>9</sup> 40 CFR §93.105(d), as amended by 62 FR 43780, 43805, Aug. 15, 1997.

<sup>10</sup> 40 CFR §51.390, as amended by 62 FR 43780, 43801, Aug. 15, 1997. "In particular, the revision shall incorporate the provisions of the following sections of part 93, subpart A of this chapter in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in the following sections of the (rule): §§ 93.101, 93.102, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, 93.127."

<sup>11</sup> CAA §110 (a)(2), 42 U.S.C. §7410 (a)(2).

*For the most part, EPA believes that adopted regulations will be required at the State or local level to enable States to require MPOs, project sponsors, recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, and DOT to comply with the requirements of State conformity procedures. However, EPA understands that in some States, environmental board resolutions or air agency administrative orders could provide adequate authority. EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures.*

The August 15, 1997 preamble to the transportation conformity rule provided clarification on this issue. It states:

*62 FR 43780, 43800, August 15, 1997*

*Clarification on Use of Memoranda of Understanding to Establish Interagency Consultation procedures.*

*Memoranda of Understanding, or MOUs, can be used to establish interagency consultation procedures provided that the MOU is enforceable under State law. In order for the MOU to be enforceable, all agencies that are covered by the conformity rule must sign the MOU, including Federal agencies and the recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws (i.e. non-Federal project sponsors). In addition, the conformity SIP must include a rule that requires all future parties covered by the rule, including new recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, to sign the MOU. This ensures that the MOU approach will continue to apply to all subject parties.*

Appendix B provides a sample of a MOU and Appendix C provides the Executive Summary of a report published by U.S. DOT on interagency consultation.

## **EPA/DOT COORDINATION - NATIONAL MOU**

In April 2000, the U.S. EPA and U.S. DOT signed a National Memorandum of Understanding (See Appendix O) which provides an overall interagency coordination framework between the EPA and DOT. The EPA and DOT field offices will use the national framework of this MOU, in addition to EPA and DOT regional/division MOU provisions that are supportive of the MOU's goals. The EPA and DOT field offices are encouraged to develop or update their regional/division MOUs in accordance with this framework. The EPA and DOT are encouraged to use existing consultation/notification processes, such as the provisions included as part of the interagency consultation process, to implement the national MOU, whenever appropriate.

*Specific provisions of the April, 19, 2000, MOU include the following:*

- “1) DOT and EPA will notify each other when conformity determinations and SIPs are submitted....*
- 2) The EPA and DOT field offices will provide the opportunity for each agency to comment on the conformity determinations of transportation plans, TIPs, (and on new conformity determinations required by plan/TIP amendments), and projects, and on the transportation-related provisions of SIPs and Federal Implementation Plans (FIPs) within a reasonable, expedient and mutually agreeable time frame, such as within 30 days....*
- 3) If issues remain unresolved and efforts to resolve the issues are exhausted between the affected EPA Regional Administrator and FHWA Division Administrator and FTA Regional Administrator, the issues must be escalated to EPA and DOT headquarters offices for the purpose of seeking resolution within 30 days, before DOT makes its final conformity determination or before EPA takes its approval action on the SIP or FIP....*
- 4) Senior managers from FHWA, FTA, and EPA headquarters offices will meet semi-annually to discuss conformity and SIP issues and to evaluate the implementation of this national MOU. Meetings may be canceled if EPA and DOT agree that a meeting is unnecessary”.*

## **EXAMPLES OF INTERAGENCY PARTNERSHIPS**

Below are brief descriptions of partnerships that have developed in several States in efforts to implement the interagency consultation processes. These examples may provide ideas for improving interagency consultation and public participation in an area.

### **Four-state Regional Air Quality Committee**

The State of New Jersey, with FHWA/FTA, has formed a new Regional Air Quality Committee (RAQC) to foster cooperation and communication between the four adjoining States (Delaware, Maryland, New Jersey, and Pennsylvania). RAQC has subcommittees which focus on key air quality and transportation planning related areas (such as conformity and TCMs) for different areas of the Region. One of the MPOs in New Jersey also consults with its Regional Citizens Committee on conformity-related issues. Pennsylvania has also pursued the goal of additional public and interagency outreach by providing an open opportunity for interested parties to voice their opinions at public meetings. This effort has assisted Pennsylvania and the FHWA/FTA by providing them with early warning signs of key issues that may affect final acceptance of transportation plans and TIPs.

### **Annual Kick-off Meeting**

In Ohio, participants in interagency consultation have found that the holding of an annual kickoff meeting between Federal and State agencies helps to better coordinate planning activities. Periodic meetings or conference calls are arranged to follow up on key issues.

### **Statewide Transportation Conformity Working Group**

In California, a statewide conformity working group has been established as well as interagency committees in each of the State's nonattainment areas. The Statewide Conformity Workgroup meets regularly via conference call to keep all participants up to date on key developments and to share information on emerging issues. This forum has proven particularly useful and is perceived by participants to be an effective way to improve communication among all agencies impacted by the transportation conformity process.